SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1123.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

HENRY HERRMAN, CHARLES STERNBACH, AND ABRAHAM HERRMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate, etc	2	1
Summons	3	2
Notice of appearance and demand	5	2
Complaint	6	3
Amended bill of particulars	8	4
Certiorari	10	4
Answer	12	5
Trial and verdict	16	7
Order for certificate of probable cause, etc	17	7
Judgment	18	7
Bill of exceptions	20	8
Testimony of Emil Wilhelm	21	8
J. B. Atherton	21	8
Felix Meyer	23	9
George F. Hunt	23	9
Emil Wilhelm	24	10
Hayden M. Baker	24	10
Charles M. Keyser	25	10
Julius H. Strauss	26	11
Benj. H. Brigg	27	11
Meyer Jonasson	28	11
Joseph F. Wiswall	29	12
Assignment of errors	33	14
Joinder in error	35	15
Citation	37	15
Proof of service of citation	38	16

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Herrman, Charles Sternbach, and Abraham Herrman, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said William H. Robertson as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth Monday of October, eighteen hundred and eighty-eight, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness Hon. Samuel F. Miller, senior associate justice of the said Supreme Court, the 12th day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN A. SHIELDS,
Clerk.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
Circuit Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York in the second circuit, do hereby certify that the following pages, numbered from three (3) to thirty-six (36) inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Henry Herrman and others, defendants in error, ads. William H. Robertson, plaintiff in error, as the same remain of record and on file in said court.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

JOHN A. SHIELDS,
Clerk.

(Indorsed:) File mark 9478. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Henry Herrman & al., defendants in error. Writ of error. Stephen A. Walker, attorney for plaintiff in error.

Service of a copy of the within writ of error is hereby admitted this 13 of September, 1888.

STANLEY, CLARKE & SMITH,
Attorneys for Defendants in Error.

Filed U. S. circuit court. Filed Sept. 13, 1888.
JOHN A. SHIELDS,
Clerk.

3 Superior court of the city of New York.

Summons.

HENRY HERRMAN, CHARLES STERNBACH AND Abraham Herrman, plaintiffs,
against
WILLIAM H. ROBERTSON, DEFENDANT. } No. 14.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, Nov. 28th, 1884.

STANLEY, CLARKE & SMITH,
Plaintiffs' Attorneys.
(Office, No. 160 Broadway New York City.)

(Endorsed:) N. Y. superior court. Henry Herrman and als.,
4 plaintiffs, against William H. Robertson, defendant. Summons. Stanley, Clarke & Smith, plaintiffs' attorneys, 160 Broadway, New York City.

5 N. Y. superior court.

Notice of appearance and demand.

HENRY HERRMAN & AL.,
vs.
WILLIAM H. ROBERTSON.

You will please take notice that I am retained by, and appear as attorney for, the defendant in this action, and demand service of a bill of particulars of the plaintiff's claim herein and a copy of the complaint and all papers in this action upon me, at my office in the United States court and post-office building in the city of New York.

Yours,

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

New York, Dec. 4, 1884.

To Messrs. STANLEY, CLARKE & SMITH,
Attorneys for Plaintiff.

6 Circuit court of the United States for the southern district of New York.

Complaint.

HENRY HERRMAN, CHARLES STERNBACH, AND Abraham Herrman, plaintiffs,
against
WILLIAM H. ROBERTSON, DEFENDANT.

Plaintiffs complain:

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiffs were, during said times, partners in trade, under the firm name of H. Herrmann, Sternbach & Co., and, as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiffs, as and for duties thereon, and plaintiffs, in order to obtain said goods, were compelled to pay, and did pay, the sum of nine hundred and eighty-one dollars, in excess of the amount required by law.

4th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiffs made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum, so exacted, as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore, plaintiffs demand judgment against defendant for nine hundred and eighty-one dollars, with interest on the several sums named in the bill of particulars, from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiffs.

7 (Indorsed:) United States circuit court. H. Herrman & als. against William H. Robertson. Complaint.

Due service of a copy hereof is hereby acknowledged this 23 day of Dec., 1884.

(Sg'd) ELIHU ROOT,
U. S. Attorney, Attorney for Defendant.

Stanley, Clarke & Smith, plaintiffs' attorneys, 160 Broadway, New York City.

8 *Amended bill of particulars.* (*See order of December 17th, 1886.*)

Name of importer (for all the importations), H. Herrman, Sternbach & Co.

[Description of goods: Manufactures of silk assessed as manufactures of mohair & silk.]

Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
		1883.	1883.		1883.	1883.	1883.	
Liverpool..	Republic	June 30	July 13	12.15	Dec. 13	Dec 15	Dec. 15	No ans. recd.
					1884.	1884.	1884.	
"	Alaska	July 5	" 16	88.70	Jan. 24	Jan. 24	Jan. 24	"
					1883.	1883.	1883.	
"	Gallia.....	" 12	" 23	52.35	Dec 20	Dec. 20	Dec. 23	"
					1884.	1884.	1884.	
"	Arizona	" 19	" 30	59.50	Jan. 23	Jan. 23	Jan. 24	"
					1883.	1883.	1883.	
"	"	" 19	" 30	29.00	Dec. 15	Dec. 15	Dec. 15	"
"	Pavonia	" 26	Aug. 8	90.90	Nov. 11	Nov. 11	Nov. 11	"
					1884.	1884.	1884.	
"	Alaska	Aug. 9	" 20	40.00	Feb. 4	Feb. 4	Feb. 4	"
"	Gallia.....	" 16	" 28	30.15	Apr. 18	Apr. 18	Apr. 18	"
"	Arizona	" 23	Sept. 3	24.80	Jan. 31	Jan. 31	Jan. 31	"
"	Pavonia	" 30	" 12	79.65	" 12	" 12	" 12	"
"	Oregon	Oct. 4	Oct. 15	57.25	Mar. 3	Mar. 3	Mar. 3	"
"	Servia	" 16	" 22	31.65	Feb. 19	Feb. 19	Feb. 19	"
"	Gallia.....	" 25	Nov. 6	127.25	May 4	May 5	May 5	"
"	Pavonia ...	Nov. 8	" 22	104.65	July 15	July 15	July 15	"
"	Britannic ...	" 13	" 26	49.50	Jan. 5	Jan. 5	Jan. 5	"
"	Celtic.....	" 27	Dec. 10	6.05	" 14	" 14	" 14	"
"	Arizona	Dec. 6	" 18	98.45	" 18	" 18	" 18	"

9 (Indorsed:) U. S. circuit court, southern district of New York. H. Herrman & als. against William H. Robertson. Amended bill of particulars.

New York, —— 188 —. To Stephen A. Walker, esquire, defendants' attorney.

SIR: Please to take notice, that this action is brought to recover duties illegally exacted by the defendant, as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars.

STANLEY, CLARKE & SMITH,
Plaintiffs' Attorneys (160 *Broadway*).

Due service hereof admitted, this day of , 188 . Defendant's attorney.

10 The President of the United States of America to the judges of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against Henry Herrman & al., defendant, by plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 17 day of December, 1884, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Hon. Samuel F. Miller, senior associate justice of the Supreme Court of the United States, the 12 day of December, in the year one thousand eight hundred and eighty-four.

[L. S.] TIMOTHY GRIFFITH,
Clerk.

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

11 (Indorsed:) U. S. circuit court. Henry Herrman & o'rs vs. W. H. Robertson, collector, etc. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant.

Take notice, that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, Dec. 12, 1884.

Yours,

ELIHU ROOT,
U. S. Attorney, Attorney for Defendant.

To Messrs. STANLEY, CLARKE & SMITH, *Plaintiffs' Attorney.*

12 Circuit court of the United States for the southern district of New York.

HENRY HERRMAN & O'RS
versus
WILLIAM H. ROBERTSON, COLLECTOR, ETC. } 9478.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint; and he denies that the plaintiffs were compelled to pay or did pay defendant as collector or otherwise the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiffs filed with defendant any protest or protests in writing, in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint, or any sum, is now due and owing to the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in fact such goods as are described in the said complaint.

13 V. As to the following importations severally, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon: per—

	Entry No.
Gallia	95,142
Arizona	98,744
Arizona	98,745

VI. As to the following importations severally, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon:

	Entry No.
Gallia	95,142
Arizona	98,744
Arizona	98,745

VII. As to the following importations severally, he alleges that this action was not brought within ninety days after the decision by the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon; or within ninety days after payment of duties paid thereon after such decision:

	Entry No.
Republic	90,577
Alaska	91,230
Pavonia	102,743
Alaska	108,876
Gallia	112,802
Arizona	115,522
Servia	140,436

VIII. As to the following importations severally, he alleges that this action was brought before the payment of the duties liquidated on said importations: per—

	Entry No.
Celtic	164,329
Arizona	168,925

14 IX. And further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made, were demanded of plaintiffs and were by plaintiffs voluntarily paid to him in his capacity as collector of customs, as and for duties due the United States on imported merchandise, and were forthwith before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiffs paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made, were sums due from plaintiffs to the United States as duties according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment, that the complaints be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney,
Attorney for the defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Henry Herrman & oers vs. W. H. Robertson, collector, etc.
15 Answer. Stephen A. Walker, United States attorney, attorney for defendant. Stanley, Clark & Smith, plaintiffs' attorney. Filed Dec. 14, 1886.

16 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Wednesday, the fourth day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Present, the honorable E. Henry Lacombe, circuit judge.

HENRY HERRMAN ET AL.
vs. } 9478.
WILLIAM H. ROBERTSON.

Now come the plaintiffs by Stanley, Clarke & Smith, esq's, their attorneys, and move the trial of this cause; also comes the defendant by Macgrane Coxe, esq., ass't U. S. attorney, his attorney; thereupon a jury is empanelled, and the cause proceeds to trial. After hearing the evidence of the parties and the argument of counsel, the jury, by direction of the
17 court, find a verdict for the plaintiffs on Exhibits Nos. 2, 3, & 5, for the sum of $380.37.

It is ordered that a certificate of probable cause be entered, and that defendant have a stay of proceedings on said verdict for thirty days in which to prepare and serve a case, with leave to turn the same into a bill of exceptions.

An extract from the minutes.

(Signed) TIMOTHY GRIFFITH, *Clerk.*

[SEAL U. S. CIRCUIT COURT, S. D. OF N. Y.]

18 U. S. circuit court, southern district of New York.

Judgment.

HENRY HERRMAN ET AL.
vs. }
WILLIAM H. ROBERTSON.

This action having been brought on for trial before the Hon. E. Henry Lacombe, a judge of this court, and a jury, on the 4th day of January, 1888, and a verdict having been thereafter rendered for the plaintiffs for the sum of three hundred and eighty dollars and thirty-seven cents ($380.37) and the costs having been thereafter taxed in the sum of forty-six dollars and eighty-five cents ($46.85)—

Now, on motion of Stanley, Clarke & Smith, attorneys for the plaintiffs—

It is adjudged that the plaintiffs, Henry Herrman, Charles Sternbach, and Abraham Herrman, have judgment against the defendant William H. Robertson for the sum of three hundred and eighty dollars and thirty-seven cents ($380.37) damages, together with the sum of fifteen dollars and forty cents ($15.40) interest, and forty-six dollars and eighty-
19 five cents ($46.85) costs, making in all the sum of four hundred and forty-two dollars and sixty-two cents ($442.62), and have execution therefor.

Judgment signed this tenth day of September, A. D. 1888.

(Signed) G. E. ROGERS,
Deputy Clerk.

(Endorsed over all :) U. S. circuit court, southern district of New York. Henry Herrman et. al. vs. William H. Robertson. Judgment. Stanley, Clarke & Smith, plaintiffs' attorneys, 120 Broadway, N. Y.

(File mark:) U. S. circuit court. Filed Sept. 10, 1888. John A. Shields, clerk.

20 United States circuit court, southern district of New York.

HENRY HERMANN AND OTHERS, vs. WILLIAM H. ROBERTSON. } N. S. 9478.

Defendant's bill of exceptions.

Afterwards, to wit, on the third and fourth days of January, 1888, this cause came on to be heard at a stated term of the above-named court, duly holden before the Hon. E. Henry Lacombe, circuit judge, and a jury, duly impanelled and sworn to try the issues herein.

The above-named parties appeared by their counsel respectively: Stephen G. Clarke, esq., for the plaintiffs, and Stephen A. Walker, U. S. attorney, and Macgrane Coxe, asst. U. S. attorney, for the defendant. And during the course of the trial, and before the rendering of the verdict therein, the counsel for the defendant did take and allege certain exceptions to certain rulings of the court, which said exceptions were by the court duly allowed, and are hereinafter more at large set out.

To sustain the issues upon their part the plaintiffs introduced evidence tending to prove that in the months of June, July, August, October, November, and December, 1883, they imported into the port of New York from Great Britain certain merchandise, hereinafter more specifically
21 described, upon which the defendant, as collector of customs, upon the entry thereof levied and collected a duty of fifty cents a pound and thirty-five per cent. ad valorem under Schedule K of the tariff act of March 3, 1883 (T. I. New 363 G); that the plaintiffs protested against this assessment, claiming, in substance, that the goods in question, being made of silk, or of which silk is the component material of chief value, should pay only a duty of fifty per cent. ad valorem (Schedule L, of the act of March 3, 1883, T. I. New 383); that as to the entries which formed the subject of the verdict hereinafter set forth, the plaintiffs' protest and appeal were duly made and taken, and this action seasonably brought to recover the duties so as aforesaid alleged to have been collected in excess of the lawful rate.

The plaintiffs produced samples of the importations in question, marked Exhibits 7 and 8, and also introduced in evidence the testimony of witnesses in substance as follows:

EMIL WILHELM, being duly sworn and examined, testified:

I deal in goods similar to Exhibits 7 and 8; they are bought and sold, and known in the trade and commerce of this country, as silk seals.

Being cross-examined by counsel for the defendant witness further testified:

I believe the samples shown me are made of silk, cotton, and possible a little mohair.

J. B. ATHERTON, a witness for the plaintiffs, being duly sworn, testified, in substance, as follows:

22 I am with the house of Briggs, Newman & Co., of Bradford, having a place of business here at No. 18 Mercer street; our business is importing goods similar to these and woolen goods. Have been connected with the American business nearly five years, and have been familiar with the class of goods represented by exhibits 7 and 8 for longer than that time; have been selling these goods in this market; they are what we call imitation seal-skins. There have been different kinds; there have been all mohair. I should judge there is some mohair in this; the warp, that is the back, is made of cotton, and the pile is made of silk. Some people might call them all silk. I would certainly call them "combination seal" to give them a definite term. Some people would call them silk seals, but I would not call them that unless I knew that they were. I am not in a position to say they are all silk; my opinion is there is a little mohair in them.

Being cross-examined by counsel for defendant, witness testified:

Goods bought and sold as seals are sometimes made of all mohair. I should say it was a year and a half since there were any seals like those represented by the samples 7 and 8, made of silk and mohair, brought here, speaking from my own experience, and since any other than all silk were brought here. Previous to that time there was both mohair, silk and mohair, and all silk. Now I would say they are all silk. There has been a contention that silk has not worn as well as where there is a small admixture of mohair; and, of course, the application of the duty has

23 made it almost impossible to import them with mohair in them. The leaving out of the mohair is for the purpose of evading the higher rate of duty.

Being further examined by counsel for plaintiffs, testified:

I should say that probably seven-eighths of the value of the material would be silk in this cloth.

FELIX MEYER, a witness for the plaintiffs, being duly sworn, testified in substance as follows:

I am one of the firm of Hugo, Meyer & Co.; we import seal plushes, silk seal plushes, silks and seals. I have been engaged in this business for four years and have been entering these goods all the time, goods similar to exhibits 7 and 8. I have bought these goods in England as silk seals, as being composed of silk with a cotton back, and sold them here the same way.

Being cross-examined by defendant's counsel, witness testified:

All the testimony that I have given is based on the knowledge that I have obtained since about December, 1883; not as far back as March 3, 1883.

GEORGE F. HUNT, a witness on behalf of the plaintiffs, being duly sworn, testified in substance, as follows:

I am with the house of Harbison & Loder, dealers in dry goods. I bought similar goods to exhibits 7 and 8 in 1883, I think in 1882, in 1884, and 1885. I sell them as well as buy them. They are called silk seals, silk plushes. (Witness being handed memorandum.) I bought the

goods covered by that bill from Herman, Sternbach & Co., in
24 October, 1883; they are silk seals, the back is cotton and the face is silk and mohair. The silk is of more value than the mohair or cotton in these goods.

Being cross-examined by counsel for defendant he further testified:

I have dealt in these goods made of silk and mohair since about 1880; previous to that time I think that there were imitation seal-skins made from mohairs. I could not say positively, but I think there were. There were mohairs made, yes; my experience goes to, I think, 1880, may be 1881, in these goods. These imitation seals were called at that time mohairs, and they are called so now, and they were made to represent silk seals.

Being further examined by counsel for plaintiff, witness testified:

There were also imitation seal-skins made of cow-hair.

EMIL WILHELM, a witness on behalf of the plaintiffs, being duly sworn, testified in substance as follows:

I should say there was from fifteen to twenty per cent. of mohair in these samples. The silk, I think, is worth nearly twice what mohair is, and of greater value than the cotton back.

HAYDEN M. BAKER, a witness on behalf of the plaintiffs, being duly sworn, testified in substance as follows:

I am, and have been for over eight years, in the employ of the Government as chemist in the laboratory at the appraisers. For some portion of the time it has been a part of my duty to analyze samples of goods manufactured of silk, cotton, and mohair. From my examination of
25 silk seals I have become very familiar with that class of goods. In Exhibits 7 and 8 the qualities are very similar. I should say that about eighty-five per cent. of the face is silk, the back is cotton, and the other material twisted in with the silk is mohair. The silk is worth about $5.80 a pound, and the mohair is worth about $2 a pound; there is a great many times more value of silk than there is of mohair. In these samples the percentage value of the silk is 93.75 per cent.

Being cross-examined by defendant's counsel, he testified:

I have during that time passed imitation seal skins, which were made of mohair, and others which were made principally of mohair. I do not know how they were designated in trade and commerce, but they were imitations of seal skins.

CHARLES M. KEYSER, a witness on behalf of the plaintiffs, being duly sworn, testified in substance as follows:

I am examiner in the appraiser's stores, in the sixth division, and have been there since July 5th, 1883; from July 10th, 1868, to that time I was clerk there; have become familiar with the various sorts of goods that passed through the stores at that time; the goods that we examine in that division are English woolens for men's wear, mohair goods, that is, seal-skin goods where there is mohair in them; flannels, blankets, under 363 and 362 generally. (Witness being shown exhibits 1–i, 2–i, 3–i, 4–i, 5–i, and 6–i, the invoices of the goods in question.) I examined and returned

all of these invoices. I do not know whether exhibits 7 and 8 are
26 samples of those invoices or not. The quality numbers are the same. There were no samples retained at that time. These goods were examined in the third division previously. There was a question before the Secretary of the Treasury. The Secretary of the Treasury decided that they should be classified as goat's hair. The return on Exhibit 1–i is "manufacture of goat's hair, silk, and cotton. Silk, chief value 50 per cent." On Exhibit 2–i "manufacture of goat's hair, silk, and cotton, over 80 cents a pound, 35 and 40." On Exhibit 3–i "manufacture of goat's hair, silk, and cotton, over 80 cents a pound, 35–40." On Exhibit 4–i "manufacture of goat's hair, silk, and cotton, over 80 cents a pound, 35–40." On Exhibit 5–i "manufacture goat's hair, silk, and cotton, over 80 cents a pound, 35–40." Exhibit 6–i is the same. The goods which I returned as silk chief value and the goods contained in the other five invoices were the same. In making the return as manufactures of goat's hair, silk, and cotton, dutiable at 35 and 40, I acted under instructions from the Department.

Being cross-examined by defendant's counsel, witness testified:

I was not acquainted with this line of goods prior to July 5, 1883.

JULIUS H. STRAUSS, a witness on behalf of the plaintiffs, being duly sworn, testified in substance as follows:

I am one of the firm of Strauss, Kupfer & Co., importers of dry goods. Have been in the business 18 years. I have dealt in the class of
27 goods represented by Exhibits 7 and 8 for seven or eight years, ever since they came into the market. They are silk seals, known in trade and commerce as a silk article.

Being cross-examined by counsel for defendant, witness testified:

There was a seal imported from Europe before and after the act of March 3rd, 1883, which was entirely of mohair. They were bought and sold in trade and commerce as mohair seals. An article composed of as much as 90 per cent. silk, and called silk seals, was first imported into this country about seven or eight years ago.

BENJAMIN H. BRIGG, a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

I am one of the firm of Brigg, Entz & Co., in the dry goods business, in this city; have been in the business about twelve years; I have dealt in the same class of goods as Exhibits 7 and 8 for about nine years, both importing and selling; they are known in trade and commerce as silk seals—silk seal plush; they were first imported about ten years ago.

Being cross-examined by counsel for defendant, witness testified:

I have been acquainted with the line of goods which are made entirely or principally of mohair about twenty years, and have dealt in them for about that time. The extent of our business in goods represented by the seal plushes here varies year by year. These goods have taken the place of mohair plushes. I could not give you the figures at all, about what was the extent of my trade in silk seal plushes as compared with
28 the extent of my trade in mohair plushes in the early part of 1883. I could not give you an idea; I think the sales of the silk seal plushes exceeded that of the mohair plushes. The mohairs were known

in trade and commerce as mohair seals. Silk seals are used to make caps, muffs, coats, and cloaks. The mohair seal is used similarly; to make the same articles out of.

Being further examined by counsel for plaintiffs, witness testified: There have been seal skins or imitation seal skins made largely of calf hair, and used for the same purposes as these mohair seals and seal plushes, only for a lower grade of goods; and there are cloths used for caps and under garments as well; in fact, all textile fabrics are used for outside garments. Besides these mohair seals, mohair is also manufactured into dress goods.

MEYER JONASSON, a witness on behalf of the plaintiffs, being duly sworn, testified, in substance, as follows:

I am one of the firm of Meyer Jonasson & Co., manufacturers of ladies' cloaks. We buy goods like samples 7 and 8 for that purpose. I have handled such goods for twenty-seven years. They are dealt in in commerce under the name of silk-seal plushes. We always dealt with the house of Herrman, Sternbach & Co. [Witness being handed a memorandum.] We bought that bill of goods of them under the name of silk plushes; they are like these samples.

Being cross-examined by counsel for defendant, witness testified:

29 I am acquainted with mohair plushes made of mohair. A judge of goods would know immediately the difference between mohair plushes and silk plushes. They are of a similar manufacture. They are all similar weaving, similar make, and would naturally imitate the real seals as well as the silk ones imitate them. I could not say that mohair plushes could be used for the same purpose as the silk plushes. The silk plushes are used to make cloaks of, and if a buyer comes and wants to buy a silk plush garment, a silk plush is shown to him. If he wants a mohair plush garment he would ask for a mohair plush garment. If he would ask for any other kind of garment, and we had it, it would be shown to him under such name. If the person requires it, the silk plushes are made after the same pattern as the mohair plushes. The silk plushes, mohair plushes, and a hundred other materials, are put to the same use. I think there is mohair in both Exhibits 7 and 8. I have studied mohair for many years. I think mohair is put in there to strengthen the pile, the silk pile on the face of the material, which would otherwise not have this substantial hold that it has now. It would not stand up so straight and so well if a little mohair was not put in there. It has been tried without mohair in it, and it lay a little flatter; and this is done for the purpose of strengthening the silk in it.

JOSEPH F. WISWALL, a witness on behalf of the plaintiffs, being duly sworn, testified, in substance, as follows:

I am, and have been for eight years, an examiner in the appraiser's department in the third division. We have charge of silks, and ma-

30 terial of which silk is the chief value. Goods similar to Exhibits 7 and 8 have come into our division for classification and appraisement. I think they were classified at fifty per cent. prior to 1883, and at sixty per cent. previous to that. They were classified as silk and cotton.

I examined the goods described in the invoice dated December 7, 1883; they are similar goods to the samples here.

Being cross-examined by counsel for defendant, witness testified:

I am acquainted with mohair seals. Mohair seals and mohair plushes are terms used to describe about the same article.

Being further examined by counsel for plaintiffs, witness testified:

I have no experience in the manufacture of these plushes. We have to analyze them, to examine them carefully, and compare them. I derive my knowledge of the purpose for which mohair is put in these goods partly from observation and from what I have heard. I have never dealt in these goods. I have taken the samples of these goods apart; we have to examine them under a glass to detect mohair in them. We can generally tell by the feeling how the different parts are arranged. I have had some experience in the wearing of these plushes.

Mohair is put in these goods to strengthen the pile; to make it stand up; to prevent its crushing in wear. The plush will stand up and keep its brilliancy better with that mohair in it. That the value of the goods was over 80 cents per pound.

To sustain the issues upon his part the defendant adduced testimony in substance as follows:

31 That imitation seals were originally made entirely of mohair; that silk was introduced in the first instance in minor proportions until it has gradually assumed the relation of chief value, which it bears to-day, because the appearance of silk is chiefly coveted by the buyer, that is, a glossy appearance, which can not be obtained wholly with mohair alone. The function of the mohair, which is still retained, is keeping up the pile.

The testimony having been closed, defendant's counsel moved the court for a direction of verdict for the defendant, upon the grounds, first, that the plaintiffs had not adduced sufficient testimony to sustain their cause of action; second, that the goods in question assimilated to manufactures of the hair of the goat, and that consequently, by the operation of section 2499 R. S., the rate of duty applicable to the latter should be applied to the goods in suit; and, third, that through the amendment of section 2499 R. S. by the act of March 3, 1883, even if it appears that the classification alleged by the plaintiff is a proper one, that alleged by the defendant being also a proper one, it was the duty of the defendant to impose the higher of the two rates.

The court denied the motion of the defendant, to which ruling defendant's counsel excepted, which exception was duly allowed by the court.

The court then directed a verdict for the plaintiffs for the sum of $380.37, to which ruling of the court defendant's counsel excepted, which exception was duly allowed by the court.

The jury returned a verdict for the plaintiffs in accordance with the direction of the court.

32 And inasmuch as the exceptions, matters and things aforesaid would not otherwise appear by the record, I have settled, allowed, and signed this bill of exceptions on the prayer of the said defendant by his counsel; and

It is ordered that the same be filed as a part of the record herein, with

like force and effect as if the same had been reduced to writing, signed, and filed before the case was given to the jury.

Witness my hand, at the city of New York, on the 10th day of August, 1888.

E. HENRY LACOMBE,
Circuit Judge.

Consented to Aug. 8, 1888.

STEPHEN A. WALKER,
U. S. Att'y and Att'y for Def't.

STANLEY, CLARK & SMITH,
Plaintiff's Attorney.

(Indorsed:) U. S. circuit, southern district of New York. Henry Hermann et al., versus William H. Robertson. Bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant. U. S. circuit court. Filed Aug. 11, 1888. John A. Shields, clerk.

33 Supreme Court of the United States.

Assignment of errors.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
vs.
HENRY HERRMAN, CHARLES STERNBACH, AND Abraham Herrman, defendant in error.

Afterwards, to wit, on the fourth Monday of October, in the same term, before the justices of the said court at the Capitol in Washington, come the said plaintiff in error by Stephen A. Walker, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas, by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, etc.

STEPHEN A. WALKER,
Attorney for Plaintiff in Error.

34 (Indorsed:) United States Supreme Court. William H. Robertson, plaintiff in error, vs. Henry Herrman & al., defendants in error. Assignment of error. Stephen A. Walker, attorney for plaintiff in error.

Due service of a copy of the within assignment of error is hereby admitted this 13th day of September, 1888.

STANLEY, CLARKE, & SMITH,
Attorneys for Defendants in Error.

To Messrs. Stanley, Clarke, & Smith, attorneys for defendants in error.

35 Supreme Court of the United States.

Joinder in error.

WILLIAM H. ROBERTSON, PL'FF IN ERROR,
vs.
HENRY HERRMANN ET AL., DEF'TS IN ERROR.

And afterwards, to wit, on the fourth Monday of October, in said term, the said defendants in error, by Stanley, Clarke & Smith, their attorneys, comes here into court and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

(S'g'd) STANLEY, CLARKE & SMITH,
Attorneys for Defendants in Error.

36 (Indorsed:) United States Supreme Court. William H. Robertson, plaintiff in error, vs. Henry Herrman et al., defendants in error. Joinder in error. Stanley, Clarke & Smith attorneys for defendants in error.

Due service of a copy of the within joinder in error is hereby admitted this 20th day of September, 1888.

(S'g'd) STEPHEN A. WALKER,
Attorney for Plaintiff in Error.

To Stephen A. Walker, esq., attorney for plaintiff in error.

(Indorsed—file mark:) U. S. circuit court. Filed Sep. 20, 1888. John A. Shields, clerk.

37 UNITED STATES OF AMERICA, *ss:*

To Henry Herrman, Charles Sternbach, and Abraham Herrman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourth Monday of October, eighteen hundred and eighty-eight, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, September 12th, 1888.

E. HENRY LACOMBE,
Circuit Judge.

38 (Indorsed:) File mark. 9478. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Henry Herrman and al., defendants in error. Citation. Stephen A. Walker, attorney for plaintiff in error.

Due service of a copy of the within citation is hereby admitted this 13th day of September, 1888.

STANLEY, CLARKE & SMITH,
Attorneys for Defendants in Error.

U. S. circuit court. Filed Sept. 13, 1888. John A. Shields.

(Indorsement on cover:) No. 1123. William H. Robertson, late collector of the port of New York, plaintiff in error, *vs.* Henry Herrman, Charles Sternbach, and Abraham Herrman. S. New York, C. C. U. S. Filed September 21, 1888.

TRANSCRIPT OF R[illegible]

SUPREME COURT OF THE UNI[illegible]

OCTOBER TERM, 1880.

No. [illegible] 85

WILLIAM H. ROBERTSON, COLLECTOR OF [illegible]
OF NEW YORK, PLAINTIFF IN [illegible]

vs.

LOUIS WEDDIGEN, ABRAHAM SONDER[illegible] AND [illegible]
WEDDIGEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STA[illegible]
SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 28, 1880.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Louis Weddigen, Abraham Sondern, & August Weddigen, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said William H. Robertson, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-seven, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 6th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

The foregoing writ is hereby allowed.

WM. J. WALLACE.

2 (Indorsed:) 8580. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Louis Weddigen & al., defendants in error. Writ of error. Stephen A. Walker, attorney for plaintiff in error.

Due service of a copy of the within writ of error is hereby admitted this 7 day of June, 1887. Charles Curie, attorney for def'ts in error.

(Stamp:) U. S. circuit court, June 7, 1887. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience 3 thereto, do hereby certify that the following pages numbered from four to forty-one, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of William H. Robertson, plaintiff in error, against Louis Weddigen, Abraham Sondern, and August Weddigen, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this thirteenth day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

4 Summons No. 2.

Superior court of the city of New York.

LOUIS WEDDIGEN, ABRAHAM SONDERN, and August Weddigen, plaintiffs,
against
WILLIAM H. ROBERTSON, DEFENDANT.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, May 19, 18 3.

STANLEY, CLARKE & SMITH, *Plaintiffs' Attorney,*
Office No. 160 *Broadway, New York City.*

5 (Indorsed:) No. 2. N. Y. superior court. Louis Weddigen, plaintiff, vs. William H. Robertson, defendant. Summons. Stanley, Clarke & Smith, plaintiffs' attorneys, 160 Broadway, New Y'k City.

6 2. *Notice of appearance and demand.*

N. Y. superior court.

LOUIS WEDDIGEN & AL.
vs.
WILLIAM H. ROBERTSON.

You will please take notice that I am retained by and appear as attorney for the defendant in this action, and demand service of a bill of particulars of the plaintiffs' claim herein and a copy of the complaint and all papers in this action upon me at my office, in the United States court and post-office building, in the city of New York.

Yours,

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

New York, June 7, 1883.

To STANLEY, CLARKE & SMITH,
Attorneys for Plaintiff.

7 (Endorsed:) N. Y. superior court. Louis Weddigen & al. 2, vs. Wm. H. Robertson. Notice of appearance. Elihu Root, U. S. attorney, attorney for defendant. To Stanley, Clarke & Smith, pl'ffs' at'ys.

8 (122.)

The President of the United States of America to the judges of the superior court of the city of New York, greeting:

[L.S.] We, for certain reasons, being desirous that our circuit court of the United States, for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against William H. Robertson, defendant, by Louis Weddigan et al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 16th day of June, 1883, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief-Justice of the Supreme Court of the United States, the 12th day of June, in the year one thousand eight hundred and eighty-three.

TIMOTHY GRIFFITH, *Clerk.*

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

9 (Indorsed:) 8580. U. S. circuit court. Louis Weddigen et al. versus William H. Robertson. Copy certiorari. Elihu Root, United States attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, June 12, 1883. Yours, Elihu Root, U. S. att'y, att'y for defendant, to serve the within writ. To Stanley, Clarke & Smith, plaintiff's att'ys.

10 *Complaint.*

Circuit court of the United States for the southern district of New York.

LOUIS WEDDIGEN, ABRAHAM SONDERN, & August Weddigen, plaintiffs,
v.
WILLIAM H. ROBERTSON, defendant.

Plaintiffs complain:

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiffs were, during said times, partners in trade under the firm name of L. Weddigen & Co., and, as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

11 3d. The defendant, as such collector, exacted from plaintiffs as and for duties thereon, viz, nine hundred and twenty-six and $\frac{80}{100}$ dollars.

4th. That by the laws of the United States the true duty upon said goods was six hundred and seventy-nine dollars, but plaintiffs, in order

to obtain said goods, were compelled to pay the sum of two hundred and forty-seven and $\frac{80}{100}$ dollars in excess of the amount required by law.

5th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods, against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

6th. That plaintiffs made due and timely appeals, in each case, to the Secretary of the Treasury, who has affirmed the decision of
12 defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

7th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

8th. That said sum so exacted, as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

13 Wherefore plaintiffs demand judgment against defendant for two hundred and forty-seven and $\frac{80}{100}$ dollars, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiffs.

(Endorsed:) United States circuit court. Louis Weddigen & o's ag't William H. Robertson. Complaint. Due service of a copy hereof is hereby acknowledged this 26th day of June, 1883. Elihu Root, U. S. attorney, attorney for defendant. Stanley, Clarke & Smith, plaintiffs' attorneys, 160 Broadway, New York City.

14 *Bill of particulars.*

[Name of importer (for all importations): ——— ———. Description of goods: Bindings & galloons.]

Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
		1882.	1882.		1883.	1883.	1883.	
Antwerp.	Switzerland.	Dec. 3	Dec. 23	27.90	Dec. 23	Jan. 25	Jan. 25	No answer rec'd.
R'dom	Zeiland	Nov. 13	" 4	101.25	" 4	" 29	" 29	"
Bremen.	Salice	" 20	" 12	118.65	" 12	" 29	" 29	"
				247.80				

15 (Indorsed:) 8580. May 19, '83. U. S. circuit court, southern district of New York. Louis Weddigen & als. against William H. Robertson. Bill of particulars.

NEW YORK, *Jan.* 23, 1883.

To ELIHU ROOT, Esquire,
Defendant's Attorney:

SIR: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars.

STANLEY, CLARKE & SMITH,
Plaintiff's Attorneys, 160 *Broadway.*

Due service hereof admitted this 26th day of June, 1883.

ELIHU ROOT,
U. S. Attorney, Defendant's Attorney.

16 Circuit court of the United States for the southern district of New York.

LOUIS WEDDIGEN
vs.
WILLIAM H. ROBERTSON, COLLECTOR.

The defendant answers to the complaint as follows:

1. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint; and he denies that the plaintiff was compelled to pay or did pay defendant, as collector or otherwise, the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiff filed with defendant any protest
17 or protests in writing in which the grounds of objection to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiff.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in fact such goods as are described in the complaint.

V. And further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were demanded of plaintiff, and were by plaintiff voluntarily paid to him in his capacity as collector of customs, as and for duties due the United States on imported merchandise, and
18 were forthwith, before the commencement of this action, and before the receipt by defendant of any protest or objection on the part of the plaintiff, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

VI. And further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were sums due from plaintiff to the United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by plaintiff and assessed with duty, and no

other sums than duties regularly assessed and ascertained and liquidated according to law upon plaintiff's entry thereof were collected or received by defendant from the plaintiff.

19 Wherefore defendant demands judgment that the complaint be dismissed with costs.

ELIHU ROOT,
United States Attorney, Attorney for the Defendant.

U. S. circuit court, southern district of New York. Louis Weddigen v. W. H. Robertson, collector, &c. Elihu Root, United States attorney, attorney for defendant. To Stanley, Clarke & Smith, plaintiff's attorneys.

20 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on Tuesday, the twelfth day of January, in the year of our Lord one thousand eight hundred and eighty-six.

Present, the honorable Nathaniel Shipman, sitting as circuit judge.

LOUIS WEDDIGEN
vs.
WILLIAM H. ROBERTSON. } 8580.

Now come the plaintiffs, by Stanley, Clarke & Smith, esq's, their attorneys, and move the trial of this cause; likewise comes the defendant, by Macgrave Coxe, esq., asst. U.S. att'y, his attorney. Thereupon a jury is empaneled and the cause proceeds to trial. Counsel for the respective parties stipulate in open court that if the verdict be for the plaintiffs it shall be for the plaintiffs generally, subject to adjustment at the custom-house under the direction of the court. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, the jury retire, and on their return render a verdict whereby they find for the plaintiff.

21 It is ordered that a certificate of probable cause be entered herein, and that the defendant have a stay of proceedings on said verdict for thirty days from January 6, 1886.

TIMOTHY GRIFFITH,
Clerk.

22 United States circuit court for the southern district of New York.

N. S. 8580.]

CUSTOM-HOUSE, NEW YORK,
Collector's Office, June 1, 1887.

L. WEDDIGEN ET AL.
vs.
W. H. ROBERTSON. } Verdict dated Jan'y 12th, 1886.

SIR: The adjustment in the above case is as follows:

Amount overpaid	$233. 25
Interest added to Jan. 12, 1886	43. 24
	$276. 49

Respectfully,
(C. S.)

D. MAGONE,
Collector.

To the United States district attorney for the southern district of New York.

23 U. S. circuit court, southern district of New York.

LOUIS WEDDIGEN, ABRAHAM SONDERN, & August Weddigen
vs.
WILLIAM H. ROBERTSON.
} Judgment 8580.

The above-entitled cause having been brought on for trial before the Hon. Nathaniel Shipman, sitting as a judge of this court, and a jury, and a verdict having thereafter been rendered for the plaintiff, subject to adjustment at the custom-house, and the same having thereafter been duly adjusted at the sum of two hundred and seventy-six dollars and forty-nine cents ($276.49), and the costs having thereafter been taxed in the sum of forty-six dollars and eighty-five cents ($46.85):

Now, upon motion of Stanley, Clarke & Smith, attorneys for the
24 plaintiffs, it is ordered that the plaintiffs have judgment against the defendant herein in the sum of two hundred and seventy-six dollars and forty-nine cents (276.49) damages, and the sum of forty-six dollars and eighty-five cents (46.85) costs, making in all the sum of three hundred and twenty-three dollars and thirty-four cents (323.34), and that the plaintiffs have execution therefor.

Dated New York, June 4, 1887.

Judgment signed this 4th day of June, 1887.

JOHN A. SHIELD,
Deputy Clerk.

(Endorsed:) U. S. circuit court, southern district of New York. Louis Weddigen et als *vs.* William H. Robertson. Judgment roll. Stanley, Clarke & Smith, attorneys for plaintiffs, No. 120 Broadway, N.
25 Y. City. U. S. circuit court. Filed June 4, 1887. Timothy Griffith, clerk.

26 United States circuit court, southern district of New York.

LEWIS WEDDIGEN, ABRAHAM SONDERN, AND August Weddigen
against
WILLIAM H. ROBERTSON, COLLECTOR OF CUSTOMS, &c., defendant.
} N. S. 8580.

Defendant's bill of exceptions.

And afterwards, on the 12th day of January, 1886, this cause came on to be tried at a stated term of this court duly holden before the Hon. Nathaniel Shipman, district judge of the United States for the district of Connecticut, duly assigned to hold this court, and a jury duly empanelled and sworn to try the issue herein. The above named parties appeared respectively by their counsel: Stephen G. Clarke, esq., for the plaintiffs; and Macgrane Coxe, assistant United States attorney, for the defendant. And during the course of the trial, and before the rendering of the verdict therein, the counsel for the defendant did take and allege certain ex-

ceptions to certain rulings of the court, which said exceptions were by the court duly allowed and are hereinafter more at large set out.

27 To sustain the issues upon their part the plaintiffs adduced evidence tending to show that in the year 1884 they imported into this port from Europe certain bindings and galloons, hereinafter more specifically described; that the defendant, upon the entry thereof at the custom-house, levied and collected a duty of sixty cents a pound and fifty per centum ad valorem under schedule L., class 3 of section 2504 of the Revised Statutes of the United States (paragraph 1168 of Heyl's compilation); that the plaintiffs duly protested against this assessment and collection, claiming in substance that by virtue of a previous provision in the same schedule (paragraph 1163 of Heyl's compilation) these goods were properly dutiable at no more than fifty cents a pound and thirty-five per centum ad valorem; that appeal was duly taken to the Secretary of the Treasury from said assessment and collection; and that this action was seasonably brought to recover the excess of duties alleged so to have been unlawfully exacted.

The plaintiffs produced samples of the importations in question; and in support of the issues upon their part adduced evidence tending to prove that the articles in question were made of mohair with a little silk and cotton in them, and were all woven in the loom; that they were used for coat bindings; that braids were also used for coat bindings; there are a large variety of bindings for coats that are woven; there are braids braided by machinery that are used as bindings. Two lots of samples, marked plaintiff's exhibits 3 and 4, were introduced in evidence,

28 No. 3 being all woven and No. 4 being braided by machinery, and the witness testified that all these goods were used for bindings, and further that No. 4 are known in trade and commerce as braids and are never woven in the loom; that a braid is always braided, never woven in the loom; that bindings, cords, and galloons are each made either by weaving on the loom or braiding on a braiding machine, or to some extent wrought by hand; and that bindings and galloons are interchangeable trade terms; that the terms binding and braid are also interchangeable. A man will ask for binding when he wants a braid, and will ask for a braid when he only wants a binding.

In support of the issues upon his part, the defendant adduced testimony which was in substance as follows: That webbings were, prior to and at the date of the act imposing the rate of duty assessed and collected, always woven in the loom; that belting also was always woven in the loom; that webbings and beltings were distinct commercial terms designating distinct commercial articles. Further, that bindings are always woven in the loom; that braids are never woven in the loom, but always braided, either by hand or by machinery; that "bindings" and "braids" are well-defined commercial terms designating articles distinctly different from one another among importers and large dealers; that "galloons" was also a distinct trade term designating articles distinct from those known as bindings and as braids and as webbings and beltings; that galloons are some-

29 times known in the trade as braid.

On cross-examination, witness for the Government testified as follows: In commercial dealing woven goods are bought and sold under the term braid; they are sometimes called bindings; there are cords that

are braided, that are wrought by hand, and that are woven. The terms galloon, binding, and braid are interchangeable to a great extent.

Another witness, C. M. Vom Baur, being called and sworn on behalf of the defendant, testified as follows:

I am an importer and deal in the articles under examination. I am acquainted with one article of rubber webbing, with an article known in the trade as belting; it is either made by the hand or woven on the loom; know an article known in trade as braids, they are braided by machines; galloons are made by machinery or woven on the loom; some are braided and some are woven.

Q. Is there a well-defined trade designation which distinguishes the braids, the article known as braids, from the article known as bindings?

A. The article known as braids is mostly used for bindings. Bindings is a more general term than braids.

Q. In the trade are the two kinds of articles distinguished by their names so that there cannot be any question when a braid is spoken of that a binding is meant?

A. Well, when a braid is mentioned, surely a braid is meant, but
30 when a binding is spoken of a galloon or binding might be meant; they are all used for bindings.

And, being cross-examined, further testified:

I know about cords; they are generally braided on a braiding machine, but are also very often woven on a loom.

Q. The term bindings, braids, and galloons in the trade to a greater or less extent are interchangeable for the same article?

A. They are.

By the COURT. Do you say a galloon is sometimes woven?

A. Yes, sir; and sometimes braided.

The defendant here rested.

Counsel for defendant thereupon moved the court for a direction of a verdict for the defendant upon the state of facts presented, urging that, as it appeared that webbings and beltings at least were always woven, and that braids at least were always braided, the words in the clause invoked by the defendant, "wrought by hand or braided by machinery," must refer to the clause immediately preceding those words, and not to webbings, beltings, bandings, braids, &c., and that consequently the clause invoked by the defendant contained more specific designation of the articles in question than the clause invoked by the plaintiffs.

The court denied said motions, and the counsel for the defendant excepted to such ruling of the court.

The court thereupon charged the jury as follows:

31 SHIPMAN, *J.*:

Gentlemen of the jury:

The collector classified the bindings in question under paragraph 1168 of Heyl, being under what is called the wool section of the tariff act in the Revised Statute, which paragraph is as follows:

"Webbings, beltings, bindings, braids, galloons, fringes, gimps, cords, cords and tassels, dress trimmings, head nets, buttons, or barrel buttons, or buttons for other forms for tassels or ornaments, wrought by hand or

braided by machinery, made of wool, worsted, or mohair, or of which wool, worsted, or mohair is a component material, fifty cents per pound, and in addition thereto fifty per centum ad valorem."

The importer says no; that clause applies only to the goods named in the section when wrought by hand or braided by machinery, and it is admitted that the goods in question were woven. Therefore the importer says the goods fall within paragraph 1163, which paragraph, it is admitted, includes the goods if the first-mentioned paragraph does not include them. It is perhaps not very important for me to read that paragraph, but I will read so much of it as is material:

"Flannels, blankets," and so forth, "and all manufactures of every description composed wholly or in part of worsted, the hair of the alpaca, goat, or other like animals such as are composed in part of wool
32 not otherwise provided for, * * * valued at above eighty cents per pound," such and such a duty.

The collector says that the words "wrought by hand or braided by machinery" apply only to the clause just preceding, to wit: "Buttons, or barrel buttons, or buttons for other forms for tassels or ornaments, wrought by hand or braided by machinery," because, he says, that webbings, bindings, and galloons are never braided or wrought by hand, but are always woven.

The plaintiff says, on the other hand, that this claim of the collector is not true; that these articles are sometimes made by hand or braided by machinery, and are sometimes woven. This makes the only question of fact in the case.

If you find that webbings, or bindings, or galloons were at the time of the passage of the act of 1874 always woven and never wrought by hand or braided by machinery, then the construction of the collector is right and the assessment of the duties was proper.

If you find that webbings, or bindings, or galloons were sometimes woven and sometimes wrought by hand or braided by machinery at the time of the passage of the statute in 1874, then the plaintiff is right, and the assessment was improper.

I will scrutinize a little the testimony which has been offered by the respective witnesses on both sides.

It is testified by the plaintiff, by Mr. Newman, one of the
33 plaintiff's witnesses, and by Mr. Von Baur, a witness for the collector, that galloons are both woven and braided. It is also testified by some of the witnesses that bindings are not a trade name; that is, that there is no one article which was exclusively called bindings, but that braids and galloons, which are trade names, are used for bindings and are called bindings. So that the plaintiff argues, from the testimony of his two witnesses and one of the witnesses for the collector, that galloons which he says are bindings, were both woven and braided.

Now we come to webbing. I can not find that either of the gentlemen speak of webbings, except Mr. Richards. He says that webbings were always made upon the loom; but upon cross-examination said that he had heard of hand-made webbing.

Now we come to bindings. The contention of the plaintiffs is that bindings, which are, he says, both galloons and braids, were sometimes woven and sometimes braided, and that there is no article which is exclu-

sively known as a binding; but that articles of both these kinds, galloons and braids, are bindings. And so he says when you find in regard to the two articles, galloons and braids, that galloons are sometimes woven and sometimes braided, then it follows that a binding is sometimes woven and sometimes braided.

The collector, upon the other hand, says that while galloons are used for bindings, and while braids are used for bindings, yet that there
34 is an article which he has shown to you, which is more particularly and distinctively known by the importers and generally by merchants in large business who deal in these articles as a binding, and that that article is not braided.

In reply to that the plaintiff comes back to the point which I have twice suggested to you, to wit, that there is nothing in trade and in commerce exclusively known as a binding, but that binding is a generic name, and includes subdivisions.

This is all that I have to submit to you.

Counsel for the defendant requested the court to charge the jury that the words "wrought by hand or braided by machinery," used in paragraph 1168 of Heyl's Compilation applied only to the articles specified in the clause immediately preceding these words, and does not apply to "webbings, beltings, bindings, braids, galloons, fringes, gimps, cords, cords and tassels, dress trimmings, head nets, buttons or barrel buttons."

The court refused so to charge; to which ruling counsel for the defendant duly excepted.

Counsel for the defendant requested the court to charge if the jury find that either of the article, webbings, bindings, galloons, are never wrought by hand or braided by machinery, the verdict should be for the defendant, and the court did so charge the jury.

35 Counsel for the defendant requested the court to charge the jury that if the jury should find that the braids are always braided, the verdict should be for the defendant. The court refused so to charge; to which ruling of the court defendant's counsel duly excepted.

The case having been given to the jury, the jury returned a verdict for the plaintiffs.

And inasmuch as the exceptions, matters, and things aforesaid would not appear by the record, I have settled, allowed, and signed this bill of exceptions on the prayer of the said defendant by his counsel; and

It is ordered, that the same be filed as part of the record herein, with like force and effect as if the same had been reduced to writing and signed and filed before the case was given to the jury.

Witness my hand this 23rd day of April, 1887.

N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court southern district of New York. Lewis Weddigen et als., versus Wm. H. Robertson. Defendant's bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant. U. S. circuit court. Filed Apr. 26, 1887. Timothy Griffith, clerk.

36 *Assignment of errors.*

Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
v.
LOUIS WEDDIGEN, ABRAHAM LOUDERN, & August Weddigen, defendants in error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court at the Capitol in Washington, comes the said plaintiff in error by Stephen A. Walker, (his) attorney and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attorney for Plaintiff in Error.

37 (Indorsed:) 8580. United States Supreme Court. William H. Robertson, plaintiff in error, vs. Louis Weddigen & al., defendants in error. Assignment of error. Stephen A. Walker, attorney for plaintiff in error. Due service of a copy of the within assignment of error is hereby admitted this 7th day of June, 1877. Chas. Curie, at'y for def'ts in error. U. S. circuit court. Filed June 7, 1887. Timothy Griffith, clerk.

38 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
against
LOUIS WEDDIGEN ET AL., DEFENDANT IN ERROR.
Joinder in error. No. 8580.

And afterwards, to wit, on the 2nd Monday of October, 1887, the defendant in error herein, by Stanley, Clarke & Smith, their attorneys, come into court and say that there is no error either in the record or proceedings aforesaid, or in the judgment aforesaid, and they pray that this court may proceed to examine the record and proceedings aforesaid as to the matters assigned for error, and that the judgment herein be in all things affirmed.

(Endorsed:) U. S. Supreme Court, William H. Robertson, plaintiff in error, against Louis Weddigen et al., defendants in error. Joinder in error. Stanley, Clarke & Smith, att'ys for def'ts in error, No. 120
39 Broadway, N. Y. City.

Due service of a copy of the within is hereby admitted. N. Y., June 7th, 1887. (S'g'd) Stephen A. Walker, attorney for pl'ff in error. (File-mark:) U. S. circuit court. Filed June 7, 1887, Timothy Griffith, clerk.

40 UNITED STATES OF AMERICA, *ss:*

To Louis Weddigen, Abraham Sondern & August Weddigen, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated June 6th, 1887.

WM. J. WALLACE.

41 (Indorsed:) 8580. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Louis Weddigen et al., defendants in error. Citation. Stephen A. Walker, attorney for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 7th day of June, 1887. Charles Curie, attorney for def'ts in error.

(Stamp:) U. S. circuit court. Filed June 7, 1887. Timothy Griffith, clerk.

(Indorsement on cover:) No. 379. William H. Robertson, collector of the port of New York, plaintiff in error, vs. Louis Weddigen, Abraham Sondern and August Weddigen. S. New York, C. C. U. S. Filed August 25, 1887.

Supreme Court of the United States.

WILLIAM H. ROBERTSON, Collector of the Port of New York,
Plaintiff in Error,

AGAINST

LOUIS WEDDIGEN, ABRAHAM SONDERN and AUGUST WEDDIGEN,
Defendants in Error.

October Term, 1890.
No. 85.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

Statement.

The articles in question, the subject of this suit, were imported in 1882, and were known in trade and commerce as bindings and galloons.

The plaintiff in error assessed duty upon them at the rate of sixty cents per pound and fifty per centum *ad valorem*, and the defendants in error paid that rate, protesting, however, that the goods were only dutiable at fifty cents per pound and thirty-five per centum *ad valorem*.

The contrasting provisions of the statutes are as fol-

lows, both provisions being found in the Revised Statutes, Schedule L of Section 2504.

" Flannels, blankets, hats of wool, knit goods, balmorals, woolen and worsted yarns, and all manufactures of every description composed wholly or in part of worsted, the hair of the alpaca, goat, or other like animals, except such as are composed in part of wool, not otherwise provided for, * * * valued at above eighty cents per pound : fifty cents per pound ; and, in addition thereto, upon all the above-named articles ; thirty-five per centum *ad valorem.*"

" Webbings, beltings, bindings, braids, galloons, fringes, gimps, cords, cords and tassels, dress trimmings, head nets, buttons, or barrel buttons, or buttons of other forms for tassels or ornaments, wrought by hand or braided by machinery, made of wool, worsted, or mohair, or of which wool, worsted or mohair is a component material, fifty cents per pound, and, in addition thereto, fifty per centum *ad valorem.*"

Defendants in error introduced evidence tending to show that the goods in question were made substantially of mohair and that they were all *woven in the loom.*

They also introduced evidence as follows :

Two lots of samples of goods other than their importations, marked " Plaintiffs' Exhibits 3 and 4," were introduced in evidence, No. 3 being all woven, and No. 4 being braided by machinery, and the witnesses testified that all these goods were used for bindings ; and further, that No. 4 are known in trade and commerce as braids and are never woven in the loom ; that a braid is always braided, never woven in the loom ; that bindings, cords and galloons are each made either by weaving on the loom or braiding on a braiding machine, or to some extent wrought by hand ; and that bindings and galloons are interchangeable trade terms ; that the terms binding and braid are also interchangeable. A man will ask for binding when he wants a braid, and will ask for a braid when he only wants a binding.

And further, that there was a webbing made by hand (Record, p. 8).

Testimony in behalf of defendants in error was practically uncontroverted, although questions were submitted to the jury, as to the method of manufacture and component material. The plaintiff in error did introduce testimony as to the methods of manufacture of various articles, and upon this point there was some conflict of evidence. The questions were submitted to the jury in the manner following:

"The collector says that the words "wrought by hand or braided by machinery" apply only to the clause just preceding, to wit: "Buttons, or barrel buttons, or buttons of other forms for tassels or ornaments, wrought by hand or braided by machinery," because, he says, that webbings, bindings and galloons are never braided or wrought by hand, but are always woven.

The plaintiffs say, on the other hand, that this claim of the collector is not true; that these articles are sometimes made by hand or braided by machinery, and are sometimes woven. This makes the only question of fact in the case.

If you find that webbings, or bindings, or galloons were at the time of the passage of the Act of 1874 always woven and never wrought by hand or braided by machinery, then the construction of the collector is right, and the assessment of the duties was proper.

If you find that webbings, or bindings, or galloons were sometimes woven and sometimes wrought by hand or braided by machinery at the time of the passage of the statute in 1874, then the plaintiffs are right, and the assessment was improper."

Record, p. 10.

The jury found a verdict for the defendants in error, the original plaintiffs.

Record, p. 11.